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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,502	07/30/2003	Gary Mitchell Davenport	P138	7908

27752 7590 03/16/2006

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CINCINNATI, OH 45224

EXAMINER

JONES, DAMERON LEVEST

ART UNIT	PAPER NUMBER
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1618

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/630,502	<b>Applicant(s)</b> DAVENPORT ET AL.	
	<b>Examiner</b> D. L. Jones	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/14/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **ACKNOWLEDGEMENTS**

1. The Examiner acknowledges receipt of the amendment filed 12/14/05 wherein claims 19 and 21-27 were amended.

**Note:** Claims 1-27 are pending.

## **RESPONSE TO APPLICANT'S AMENDMENT/ARGUMENTS**

2. The Applicant's arguments filed 12/14/05 to the rejection of claims 19-27 made by the Examiner under 35 USC 102 and/or 112 have been fully considered and deemed persuasive-in-part for the reasons set forth below.

### **112 Second Paragraph Rejections**

The 112 rejection over claim 27 is WITHDRAWN for reasons of record in Applicant's response.

### **102 Rejections**

The rejection of claims 19-27 under 35 USC 102(b) as being anticipated by De et al (JP 02227051) is MAINTAINED for reasons of record in the office action mailed 10/3/05 and those set forth below.

Applicant asserts that the cited prior art does not anticipated the instant invention because it never teaches or suggests a composition comprising an amount of a polyol fatty acid polyester given to a mammal selected from the group consisting of cattle, cats, rats, rabbits, and primates. In particular, Applicant asserts that the cited prior art discloses use of the compositions in human beings (see page 1, lines 19-24)

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Applicant's arguments are found non persuasive because De ET el disclose a composition comprising a food containing fatty esters and edible fibers. The low calorie food has 10 to 50 weight percent whole fat content and 30 to 100 weight percent of the whole fat consist of indigestible polyol fatty acid ester. In addition, it is noted that page 10, lines 9-13, of Applicant's specification which discloses that high moisture food have greater than 50% moisture, kibbles have less than about 15% moisture, and semi-dry foods have about 15% to about 50% moisture are encompassed by De et al which discloses 10-50 weight percent whole fat content. Also, Applicant's arguments are non-persuasive because a recitation of intended utility in the preamble does not impart patentability to a known composition (In re Spada, 911 F.2d 705, 15 USPQ 2d 1655 (Fed. Cir. 1990)). Thus, the amending of the claims such that the composition is administered to certain mammals, does not negate the fact that Applicant is claiming a product that has been disclosed by De et al.

**WITHDRAWN CLAIMS**

3. Claims 1-18 are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

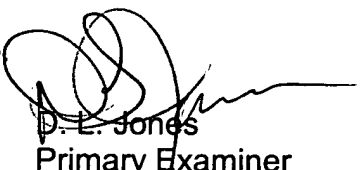
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)

  
D. L. Jones  
Primary Examiner  
Art Unit 1618

March 9, 2006